

## CHAPTER 55

## PROTECTIVE SERVICE SYSTEM

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**Cross-reference:** See s. 46.011 for definitions applicable to chs. 46, 48, 50, 51, 55 and 58.

**55.001 Declaration of policy.** The legislature recognizes that many citizens of the state, because of the infirmities of aging, chronic mental illness, mental retardation, other developmental disabilities or like incapacities incurred at any age, are in need of protective services. These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

**History:** 1973 c. 284; 1979 c. 221; 1995 a. 92.

Neither a district attorney nor a corporation counsel has a duty to petition for protective placement, determination of incompetency, or otherwise intervene when an apparently competent elderly person with a life threatening illness chooses to remain at home under a doctor's and family care rather than seeking a higher level of care that might extend her life. 74 *Atty. Gen.* 188.

**55.01 Definitions.** In this chapter:

(1) "Abuse" means any of the following:

(a) An act, omission or course of conduct by another that is inflicted intentionally or recklessly and that does at least one of the following:

1. Results in bodily harm or great bodily harm to a vulnerable adult.
2. Intimidates, humiliates, threatens, frightens or otherwise harasses a vulnerable adult.

(b) The forcible administration of medication to a vulnerable adult, with the knowledge that no lawful authority exists for the forcible administration.

(c) An act that constitutes first degree, second degree, third degree or fourth degree sexual assault as specified under s. 940.225.

(1g) "Agency" means a county department or any public or private board, corporation or association which is concerned with the specific needs and problems of developmentally disabled, mentally ill, alcoholic, drug dependent or aging persons.

(1m) "Bodily harm" has the meaning given in s. 939.22 (4).

(1p) "Caretaker" means the person, if any, who takes care of a vulnerable adult voluntarily or under a contract for care.

(1r) "County department", except as otherwise provided, means a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 designated under s. 55.02.

(1t) "County protective services agency" means the county department designated in s. 55.02.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that

required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(2r) "False representation" includes a promise that is made with the intent not to fulfill the promise.

(2t) "Great bodily harm" has the meaning given in s. 939.22 (14).

(3) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody.

(4) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the person's welfare.

(4m) "Mental illness" means mental disease to the extent that an afflicted person requires care, treatment or custody for his or her own welfare or the welfare of others or of the community.

(4p) "Misappropriation of property" means any of the following:

(a) The intentional taking, carrying away, use, transfer, concealment or retention of possession of the property of a vulnerable adult without the vulnerable adult's informed consent and with intent to deprive the vulnerable adult of possession of the property.

(b) Obtaining the property of a vulnerable adult by intentionally deceiving the vulnerable adult with a representation that is known to be a false representation, is made with intent to defraud and does defraud the vulnerable adult.

(4r) "Neglect" means an act, omission or course of conduct that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of a vulnerable adult.

(5) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his or her care or custody.

(7) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

**History:** 1973 c. 284; 1975 c. 393, 430; 1979 c. 221; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1991 a. 316; 1993 a. 445.

**Cross-reference:** See s. 46.011 for definitions applicable to chs. 46 to 51, 55 and 58.

**55.02 Protective service system; establishment.** The department shall develop a statewide system of protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons, for chronically mentally ill persons and for persons with other like incapacities incurred at any age in accordance with rules promulgated by the department. The protective service system shall be designed to encourage independent

living and to avoid protective placement whenever possible. The system shall use the planning and advice of agencies, including the county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437. The chairperson of each county board of supervisors shall designate a county department under s. 46.215, 46.22, 51.42 or 51.437 which is providing services in his or her county or a joint mechanism of these county departments to have the responsibility for local planning for the protective service system. The chairperson of the Milwaukee county board of supervisors shall designate the county department under s. 46.215 to serve as the county protective services agency for purposes of s. 55.043. The department and these county departments shall cooperate in developing a coordinated system of services. The department shall provide direct services and enter into contracts with any responsible public or private agency for provision of protective services. In each county, the county department designated under this section shall determine the reporting requirements applicable to the county under s. 880.38 (3).

**History:** 1973 c. 284; 1975 c. 393; 1979 c. 221; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1985 a. 332 s. 251 (3); 1993 a. 445.

**55.03 Status of guardian.** No agency acting as a guardian appointed under ch. 880 shall be a provider of protective services or placement for its ward under this chapter. Nothing in this chapter shall be construed to prohibit the transfer of guardianship and legal custody under s. 48.427 or 48.43.

**History:** 1973 c. 284; 1979 c. 330.

**55.04 Program responsibilities. (1)** The department shall have the following responsibilities in the administration of this chapter:

- (a) *Protective services.*
  1. Outreach;
  2. Identification of persons in need of services;
  3. Counseling and referral for services;
  4. Coordination of services for individuals;
  5. Tracking and follow-up;
  6. Provision of social services;
  7. Case management;
  8. Legal counseling or referral;
  9. Guardianship referral; and
  10. Diagnostic evaluation;
  11. Such other responsibilities as the department deems appropriate.

(b) *Protective placement.* Evaluation, monitoring and provision of protective placements.

**(2)** All agencies providing protective services shall make such reports as the department may require.

**(3)** If service is obtained by order of a court, the provider of service shall make reports under sub. (2) as the court may direct.

**(4)** Where any responsibility or authority is created under this chapter upon or in relation to a guardian, such responsibility or authority is deemed to apply to a parent or person in the place of a parent in the case of a minor who is or who is alleged to be developmentally disabled.

**History:** 1973 c. 284; 1975 c. 430; 1979 c. 110 s. 60 (1).

**55.043 County protective services agency. (1)** INVESTIGATION; POWERS. (a) If a county protective services agency has probable cause to believe that there is misappropriation of property or neglect or abuse of a vulnerable adult, the county protective services agency may conduct an investigation in Milwaukee county to determine if the vulnerable adult in question is in need of protective services. The county protective services agency shall conduct the investigation in accordance with standards established by the department for conducting the investigations. The investigation shall include at least one of the following:

1. Observation of or an interview with the vulnerable adult, in private to the extent practicable, and with or without consent of his or her guardian, if any.

2. A visit to the residence of the vulnerable adult.

3. An interview with the guardian, if any, and with the caretaker, if any, of the vulnerable adult.

4. A review of the treatment and patient health care records of the vulnerable adult.

5. A review of those financial records, if any, of the vulnerable adult that are maintained by the caretaker or landlord of the vulnerable adult or by a member of the immediate family of the vulnerable adult, the caretaker or the landlord.

(b) The county protective services agency may transport the vulnerable adult for performance of a medical examination by a physician if any of the following applies:

1. The vulnerable adult or his or her guardian, if any, consents to the examination.

2. The vulnerable adult is incapable of consenting to the examination and one of the following applies:

a. The vulnerable adult has no guardian.

b. The vulnerable adult's guardian refuses to consent to the examination, but the examination is authorized by order of a court.

**(2) LOCAL ENFORCEMENT ASSISTANCE.** The county protective services agency may request a sheriff or police officer to accompany the investigator during visits to the residence of the vulnerable adult or request other assistance as needed. If the request is made, a sheriff or police officer shall accompany the investigator of the county protective services agency to the residence of the vulnerable adult and shall provide other assistance as requested or necessary.

**(3) RESTRAINING ORDER; INJUNCTION.** If a person other than the vulnerable adult interferes with the investigation under sub. (1) or interferes with the delivery of protective services to the vulnerable adult, the county protective services agency may obtain a restraining order or injunction under s. 813.123 against the person.

**(4) OFFER OF SERVICES.** If upon investigation the county protective services agency finds misappropriation of property or neglect or abuse of a vulnerable adult, the county protective services agency may do one or more of the following:

(a) Offer services, including protective services under s. 55.05, a protective placement under s. 55.06, relocation assistance or other services.

(b) Take appropriate emergency action, including emergency protective placement under s. 55.06, if the county protective services agency considers that the emergency action is in the vulnerable adult's best interests and the emergency action is the least restrictive appropriate intervention.

(c) Refer the case to local law enforcement officials under sub. (2) for further investigation or to the district attorney, if the county protective services agency has reason to believe that a violation of chs. 939 to 951 has occurred.

(d) Refer the case to the licensing or certification authorities of the department or to other regulatory bodies if the residence, facility or program for the vulnerable adult is or should be licensed or certified or is otherwise regulated.

(e) Refer the case to the department of regulation and licensing if the misappropriation of property or neglect or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 459.

(f) Bring a petition for a guardianship and protective service or protective placement if necessary to prevent misappropriation of property or neglect or abuse and if the vulnerable adult would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter and services.

(5) **APPLICABILITY.** This section does not apply to patients or residents of state–operated or county–operated inpatient institutions or hospitals issued certificates of approval under s. 50.35 unless the alleged misappropriation of property or neglect or abuse of such a patient or resident is alleged to have been done by a person other than an employee of the inpatient institution or hospital.

**History:** 1993 a. 445; 1997 a. 27.

**55.045 Funding.** The appropriate county department designated under s. 55.02 shall, within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, provide for the reasonable program needs of persons who are protectively placed or who receive protective services under this chapter, including reasonable expenses for the evaluations required by s. 55.06 (8). Payment and collections for protective placement or protective services provided in public facilities specified in s. 46.10 shall be governed in accordance with s. 46.10. The department may require that a person who is protectively placed or receives protective services under this chapter provide reimbursement for services or care and custody received, based on the ability of the person to pay for such costs.

**History:** 1995 a. 92; 1999 a. 32.

**55.05 Protective services. (1) PREFERENCE.** The department in administering the protective services program shall contract with county departments and other agencies. If the county department contracts for protective services, the department and the county departments shall give preference to an agency with consumer and other citizen representation. The department shall provide services only if no other suitable agency is available. Courts shall adhere to the same preferences in ordering protective services.

(2) **CONDITIONS REQUIRED.** The department or an agency providing protective services under s. 55.04 may provide such services under any of the following conditions:

(a) The person who needs or believes he or she needs protective service may seek such service.

(b) Any interested person may request protective services on behalf of a person in need of services. A guardian may request and consent to protective services on behalf of the guardian's ward.

(c) The department may provide protective services on behalf of any person in need of such services.

(d) The court may order protective services for an individual for whom a determination of incompetency is made under s. 880.33 if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. The court may order psychotropic medication as a protective service under this paragraph only if a determination of incompetency is made for the individual under s. 880.33 (4m). The court may authorize a guardian to consent to forcible administration of psychotropic medication for an individual only if the court has made a finding under s. 880.33 (4r) (b) that the individual has substantially failed to comply with the administration of psychotropic medication under the individual's treatment plan.

(3) **VOLUNTARY SERVICES PREFERRED.** An individual shall receive protective services voluntarily unless ordered by the court, requested by a guardian or provided in accordance with sub. (4).

(4) **EMERGENCY SERVICES.** (a) Emergency services may be provided for not more than 72 hours where there is reason to believe that if the services are not provided, the person entitled to the services or others will incur a substantial risk of serious physical harm.

(b) Where it is necessary to forcibly enter a premises, the representative of an agency or of a county protective services agency shall obtain a court order authorizing entry and shall make the entry accompanied by a sheriff, police officer or member of a fire

department. When it appears probable that substantial physical harm, irreparable injury or death may occur to an individual, the police officer, fire fighter or sheriff may enter a premises without a court order if the time required to obtain such an order would result in greater risk of physical harm to the individual.

(c) Where a forcible entry is made under par. (b), a report of the exact circumstances including the date, time, place, factual basis for the need of such entry and the exact services rendered shall be made and forwarded to the court within 14 days of entry by the person making such entry.

(5) **ADMISSIONS WITHOUT COURT INVOLVEMENT.** (a) A person who is legally and actually capable of consenting may consent to enter a group home, foster home, community–based residential facility, as defined under s. 50.01 (1g), adult family home, as defined in s. 50.01 (1), or nursing home without protective placement under s. 55.06.

(b) 1. Guardians of persons who have been found incompetent under s. 880.33 may consent to admission to a foster home, group home or community–based residential facility, as defined under s. 50.01 (1g), without a protective placement under s. 55.06 if the home or facility is licensed for fewer than 16 beds. Prior to providing that consent, and annually thereafter, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a home or facility that implements those rights.

2. Guardians of persons who have been found incompetent under s. 880.33 may consent to admission to a nursing home if the person is admitted directly from a hospital inpatient unit for recuperative care for a period not to exceed 3 months, unless the hospital admission was for psychiatric care. Prior to providing that consent, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a nursing home that implements those rights. Following the 3–month period, a placement proceeding under s. 55.06 is required.

(c) If a person admitted under par. (b) verbally objects to or otherwise actively protests such an admission, the person in charge of the home or facility shall immediately notify the agency designated under s. 55.02 for the county in which the person is living. Representatives of that agency shall visit the person as soon as possible, but no later than 72 hours after notification, and do the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the person's guardian regarding the reasons for the admission.

2. Attempt to have the person released within 72 hours if the protest is not withdrawn and necessary elements of s. 55.06 (2) or (11) are not present and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.06 (11) if all elements are present and emergency placement in that facility or another facility is necessary or file a petition for protective placement under s. 55.06 (2). The court, with the permission of the facility, may order the person to remain in the facility pending the outcome of the protective placement proceedings.

(d) The admission to a facility of a principal by a health care agent under the terms of a power of attorney for health care instrument and in accordance with ch. 155 or the admission of an individual to a nursing home or community–based residential facility under the requirements of s. 50.06 is not a protective placement under this chapter.

**History:** 1973 c. 284; 1975 c. 393; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 135 s. 83 (3); 1985 a. 176; 1987 a. 161 ss. 7, 13m; 1987 a. 366; 1989 a. 200; 1991 a. 316; 1993 a. 187, 316, 445.

A guardian of a person, who became incompetent after voluntarily entering a nursing home with 16 or more beds, may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520, 525 N.W.2d 268 (1995).

Guardianships and Protective Placements in Wisconsin After *Agnes T. Fennell*. Wis. Law. May 1995.

**55.06 Protective placement. (1)** A protective placement under this section is a placement of a ward for the primary purpose of providing care and custody. To be eligible for placement, an individual shall have attained the age of 18, but an individual who is alleged to be developmentally disabled may receive placement upon attaining the age of 14. No protective placement under this section may be ordered unless there is a determination of incompetency in accordance with ch. 880, except in the case of a minor who is alleged to be developmentally disabled, and there is a finding of a need for protective placement in accordance with sub. (2) except as provided in subs. (11) and (12). A procedure for adult protective placement may be initiated 6 months prior to an individual's birthday at which he or she first becomes eligible for placement.

(a) The board designated under s. 55.02 or an agency designated by it may petition for appointment of a guardian and for protective services or placement. The department shall provide for a schedule of reimbursement for the cost of such proceedings based upon the ability to pay of the proposed ward or person to be protected.

(b) If a person seeking to be the guardian of a proposed ward requests the assistance of a board designated under s. 55.02 or an agency designated by it in petitioning for guardianship or for protective service or placement, such assistance may be considered a service and may be charged for based upon the ability of such person to pay for the service.

(c) If requested by the court, the corporation counsel shall assist in conducting proceedings under this chapter.

(d) No guardian or temporary guardian may make a permanent protective placement of his or her ward unless ordered by a court under this section but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11).

**(2)** The department, an agency, a guardian or any interested person may petition the circuit court to provide protective placement for an individual who:

(a) Has a primary need for residential care and custody;

(b) Except in the case of a minor who is alleged to be developmentally disabled, has either been determined to be incompetent by a circuit court or has had submitted on the minor's behalf a petition for a guardianship;

(c) As a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities, is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to oneself or others. Serious harm may be occasioned by overt acts or acts of omission; and

(d) Has a disability which is permanent or likely to be permanent.

**(3)** (a) The petition shall state with particularity the factual basis for the allegations specified in sub. (2).

(b) The petition under sub. (2) shall be based on personal knowledge of the individual alleged to need protective placement.

(c) The petition shall be filed in the county of residence of the person to be protected.

**(4)** A petition for guardianship if required under sub. (2) (b) must be heard prior to placement under this section. If incompetency has been determined under s. 880.33 more than one year preceding the filing of an application for protective placement, the court shall review the finding of incompetency.

**(5)** Notice of a petition for placement shall be served upon the person sought to be placed by personal service at least 10 days prior to the time set for a hearing. Upon service of the notice the person sought to be protected shall be informed of the complete contents of the notice. The person serving the notice shall return a certificate to the circuit judge verifying that the petition has been

delivered and notice given. The notice shall include the names of all petitioners. Notice shall also be served personally or by mail upon the person's guardian ad litem, legal counsel, guardian, if any, presumptive adult heirs, and upon other persons who have physical custody of the person to be protected whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private body or group from whom the person to be protected is known to be receiving aid and to such other persons or entities as the court may require. Notice shall also be served personally or by mail upon the department at least 10 days prior to the time set for hearing if the person sought to be protected may be placed in a center for the developmentally disabled. The department shall be allowed to submit oral or written testimony regarding such a placement at the hearing. The incompetent or proposed incompetent is presumed able to attend the hearing unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend.

**(5m)** A petition for protective placement of a person who has been admitted to a nursing home or a community-based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60-day period.

**(6)** Section 880.33 (2) applies to all hearings under this chapter except for transfers of placement under sub. (9) (b), (c) and (e). A person to be protected shall have a guardian ad litem who is an attorney appointed in accordance with s. 757.48 (1) present at all hearings under this chapter if the person does not have full legal counsel. The court may, however, excuse a personal appearance by a guardian ad litem based on information contained in a written report by the guardian ad litem to the court. If the person is an adult who is indigent, the county of legal settlement shall be liable for guardian ad litem fees. If the person is a child, the person's parents or the county of legal settlement shall be liable for guardian ad litem fees as provided in s. 48.235 (8). The subject individual, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including any person making an evaluation or review under sub. (8) (c).

**(7)** Except for emergency placement or temporary placement under subs. (11) and (12), before placement may be ordered under this chapter the court or jury must find by clear and convincing evidence that the individual to be placed is in need of placement as provided in sub. (2).

**(8)** Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The board designated under s. 55.02 or an agency designated by it shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal residence of the individual as provided in s. 49.001 (6) shall make a recommendation for placement. If the court is considering placement of the individual in a center for the developmentally disabled, the court shall request a statement from the department regarding whether the placement is appropriate for the person's needs and whether it is consistent with the purpose of the center under s. 51.06 (1) unless testimony was provided by the department under sub. (5). A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or attorney at least 96 hours in advance of the hearing to determine placement. The court or the cooperating agency obtaining the

evaluation shall request appropriate information which shall include at least the following:

(a) The address of the place where the person is residing and the person or agency who is providing services at present, if any.

(b) A resume of professional treatment and services provided to the person by the department or agency, if any, in connection with the problem creating the need for placement.

(c) A medical, psychological, social, vocational and educational evaluation and review, where necessary, and any recommendations for or against maintenance of partial legal rights as provided in s. 880.33. Such evaluation and review shall include recommendations for placement consistent with the least restrictive environment required.

(9) (a) The court may order protective services under s. 55.05 (2) (d) as an alternative to placement. When ordering placement, the court, on the basis of the evaluation and other relevant evidence shall order the appropriate board specified under s. 55.02 or an agency designated by it to protectively place the individual. Placement by the appropriate board or designated agency shall be made in the least restrictive environment consistent with the needs of the person to be placed and with the placement resources of the appropriate board specified under s. 55.02. Factors to be considered in making protective placement shall include the needs of the person to be protected for health, social or rehabilitative services; the level of supervision needed; the reasonableness of the placement given the cost and the actual benefits in the level of functioning to be realized by the individual; the limits of available state and federal funds and of county funds required to be appropriated to match state funds; and the reasonableness of the placement given the number or projected number of individuals who will need protective placement and given the limited funds available. The county may not be required to provide funding, in addition to its funds that are required to be appropriated to match state funds, in order to protectively place an individual. Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under s. 51.20 or 51.45 (13). Placement may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled under the requirements of s. 51.06 (3), foster care services and other home placements, or to other appropriate facilities but may not be made to units for the acutely mentally ill. The prohibition of placements in units for the acutely mentally ill does not prevent placement by a court for short-term diagnostic procedures under par. (d). Placement in a locked unit shall require a specific finding of the court as to the need for such action. A placement facility may transfer a patient from a locked unit to a less restrictive environment without court approval.

(b) Transfer may be made between placement units or from a placement unit to a medical facility other than those specified in pars. (c) to (e) by a guardian or placement facility without approval by a court. When transfer is made by a placement facility, 24 hours' prior written notice of the transfer shall be provided to the guardian, when feasible. If it is not feasible to notify the guardian in advance, written notice shall be provided immediately upon transfer, and notice shall also be provided to the court and to the board designated under s. 55.02 or an agency designated by it within a reasonable time, not to exceed 48 hours from the time of the transfer. Upon petition to a court by a guardian, ward, or attorney, or other interested person specifying objections to a transfer, the court shall order a hearing, within 96 hours after filing of the petition, to determine whether there is probable cause to believe that the transfer is consistent with the requirements specified in par. (a) and is necessary for the best interests of the ward. The court shall notify the ward, guardian and petitioner of the time and place of the hearing, and a guardian ad litem shall be appointed to represent the ward. If the person is an adult who is indigent, the county of legal settlement shall be liable for guardian ad litem fees. If the person is a child, the person's parents or the county of legal settlement shall be liable for guardian ad litem fees as provided in s. 48.235 (8). The petitioner, ward and guardian shall

have the right to attend, and to present and cross-examine witnesses.

(c) Transfer to a more restrictive placement, including a locked unit, may be made with notice to the guardian, the court and appropriate board designated under s. 55.02 or an agency designated by it in the manner prescribed in par. (b). Upon petition by a guardian, ward or attorney, or other interested person specifying objections to the transfer, the court shall order a hearing as provided in par. (b).

(d) Transfer of placement may be made by a guardian to a facility providing acute psychiatric treatment for the purpose of psychiatric diagnostic procedures for a period not to exceed 10 days. A court may order such placement following petition by the placement facility or other interested person, and a hearing in the manner provided in par. (b). Such period may not be extended for the purpose of providing psychiatric treatment except in the manner provided in par. (e).

(e) Temporary transfer of placement may be made for emergency acute psychiatric inpatient treatment with prior notice to the guardian when feasible. If it is not feasible to notify the guardian in advance, written notice shall be provided immediately upon transfer, and the court or appropriate board under s. 55.02 or an agency designated by it shall be notified within 48 hours. Upon petition by a guardian, ward or attorney, or other interested person specifying objections to a transfer, the court shall order a hearing as provided in par. (b). Such treatment period may not exceed 15 days, including any transfer under par. (d). Any application for continued psychiatric inpatient treatment requires proceedings under s. 51.20 or 51.45 (13).

(10) (a) The department or any agency which is responsible for a protective placement shall review the status of each person placed at least once every 12 months from the date of admission. The court in its order of placement may, however, require that such review be conducted more frequently. The review shall include in writing an evaluation of the physical, mental and social condition of each such person, and shall be made a part of the permanent record of such person. The review shall include recommendations for discharge or placement in services which place less restrictions on personal freedom, where appropriate. The results of the review shall be furnished to the department in such form as the department may require and shall be furnished to the court that ordered the placement and to the person's guardian.

(b) The department, an agency, a guardian or a ward, or any other interested person may at any time petition the court for modification or termination of a protective placement. A petition to terminate a protective placement shall allege that the conditions which warranted placement as specified in sub. (2) are no longer present. A petition shall be heard if a hearing has not been held within the previous 6 months but a hearing may be held at any time in the discretion of the court. The petition shall be heard within 21 days of its receipt by the court.

(c) Except in the case of a minor who is developmentally disabled and who has a parent or person in the place of a parent, termination of guardianship automatically revokes any placement made or services provided under this chapter unless the placement or services are continued on a voluntary basis. Notice to this effect shall be given to the ward by the provider of services at the time of termination. If placement is made or services are provided under this chapter to a minor who is developmentally disabled, the attainment of the age of majority by such individual automatically revokes any such placement made or services provided unless the placement or services are continued on a voluntary basis, or there is a finding of incompetency and appointment of a guardian pursuant to ch. 880.

(11) (a) If from personal observation of a sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a board designated under s. 55.02 or an agency designated by it appears probable that an individual will suffer irreparable injury or death or will present a substantial risk of serious physical harm

to others as a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities if not immediately placed, the person making the observation may take into custody and transport the individual to an appropriate medical or protective placement facility. The person making placement shall prepare a statement at the time of detention providing specific factual information concerning the person's observations and the basis for emergency placement. The statement shall be filed with the director of the facility and shall also be filed with any petition under sub. (2). At the time of placement the individual shall be informed by the director of the facility or the director's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family and the right to have an attorney provided at public expense, as provided under s. 967.06 and ch. 977, if the individual is a child or is indigent. The director or designee shall also provide the individual with a copy of the statement by the person making emergency placement.

(am) Whoever signs a statement under par. (a) knowing the information contained therein to be false may be fined not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both.

(ar) A person who acts in accordance with this subsection is not liable for any actions performed in good faith.

(b) Upon detention, a petition shall be filed under sub. (2) by the person making such emergency placement and a preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause to believe the grounds for protective placement under sub. (2). The sheriff or other person making placement under par. (a) shall provide the individual with written notice and orally inform him or her of the time and place of the preliminary hearing. If the detainee is not under guardianship, a petition for guardianship shall accompany the placement petition, except in the case of a minor who is alleged to be developmentally disabled. In the event that protective placement is not appropriate, the court may elect to treat a petition for placement as a petition for commitment under s. 51.20 or 51.45 (13).

(c) Upon a finding of probable cause under par. (b), the court may order temporary placement up to 30 days pending the hearing for a permanent placement, or the court may order such protective services as may be required.

(d) A law enforcement agency, fire department, county department designated under s. 55.02 or an agency designated by that county department shall designate at least one employee authorized to take an individual into custody under this subsection who shall attend the in-service training on emergency detention and emergency protective placement offered by a county department of community programs under s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the designated employee's jurisdiction offers an in-service training program.

(12) When a ward lives with the guardian, the guardian may make temporary placement of the ward. Placement may be made to provide the guardian with a vacation or to temporarily release the guardian for a family emergency. Such placement may be made for not more than 30 days but the court may upon application grant an additional period not to exceed 60 days in all. The application shall include such information as the court may reasonably deem necessary. When reviewing the application, the court shall provide the least restrictive placement which is consistent with the needs of the ward.

(14) Prior to discharge from a protective placement the appropriate board which is responsible for placement shall review the need for provision of continuing protective services or for continuation of full or limited guardianship or provision for such guardianship if the individual has no guardian. Recommendation shall be made to the court if the recommendation includes a course of action for which court approval would be required. Prior to dis-

charge from any state institute or center for the developmentally disabled, the department shall make such review under s. 51.35.

(15) A guardian of a ward placed under this section shall have the duty to take reasonable steps to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise legal rights. Notice of discharge under s. 51.35 (4) shall be given to the guardian.

(16) Placements to centers for the developmentally disabled and discharges from such institutions shall be in compliance with s. 51.35 (4).

(17) (a) Any records of the court pertaining to protective services or placement proceedings, including evaluations, reviews and recommendations prepared under sub. (8) (c), are not open to public inspection but are available to:

1. The subject of the proceedings and the subject's guardian at all times.

2. The subject's attorney or guardian ad litem, without the subject's consent and without modification of the records, in order to prepare for any court proceedings relating to the subject's protective services or placement or relating to the subject's guardianship.

3. Other persons only with the informed written consent of the subject as provided in s. 51.30 (2) or under an order of the court that maintains the records.

(b) If the subject is an adult who has been adjudged incompetent under ch. 880 or is a minor, consent for release of information from and access to the court records may be given only as provided in s. 51.30 (5).

(c) All treatment and service records pertaining to a person who is protected under this chapter or for whom application has been made for protection under this chapter are confidential and privileged to the subject. Section 51.30 governs access to treatment and service records.

(18) An appeal may be taken to the court of appeals from a final judgment or final order under this section within the time period specified in s. 808.04 (3) and in accordance with s. 809.40 by the subject of the petition or the individual's guardian, by any petitioner or by the representative of the public.

**History:** 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283.

A "common sense" finding of incompetency was insufficient for placement under this section. If competent when sober, an alcoholic has the right to choose to continue an alcoholic lifestyle. *Guardianship & Protective Placement of Shaw*, 87 Wis. 2d 503, 275 N.W.2d 143 (Ct. App. 1979).

There must be an annual review of each protective placement by a judicial officer. The requirements of ss. 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. 55.06 (9) (d) and (e). *State ex rel. Watts v. Combined Community Services*, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

A court's finding of limited incompetence under ch. 880 fulfills the incompetency requirement for protective placement under this section. *Matter of Guardianship of K. H. K.* 139 Wis. 2d 190, 407 N.W.2d 281 (Ct. App. 1987).

When a placement extended past the 30-day limit under sub. (11) (c) before a final hearing was held, the court lost authority to extend the placement. In *Matter of Guardianship of N. N.* 140 Wis. 2d 64, 409 N.W.2d 388 (Ct. App. 1987).

A county's duty under sub. (9) (a) to provide the least restrictive environment is not limited according to funds available through state and federal funds and those that the county appropriates as matching funds. *Protective Placement of D.E.R.* 155 Wis. 2d 240, 455 N.W.2d 239 (1990).

A court may order an agency to do planning and implementation work necessary to fulfill the obligation to order placement conforming to sub. (9) (a) and s. 51.61 (1) (e). In *Matter of J.G.S.* 159 Wis. 2d 685, 465 N.W.2d 227 (Ct. App. 1990).

Sub. (11) (c) required dismissal of the proceedings for failure to hold a permanent placement hearing within 30 days of the probable cause hearing; immediate refiling of the petition and emergency detention following dismissal without prejudice was impermissible. *State ex. rel. Sandra D. v. Getto*, 175 Wis. 2d 490, 498 N.W.2d 893 (Ct. App. 1993).

A guardian of a person, who became incompetent after voluntarily entering a nursing home with 16 or more beds, may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. *Guardianship of Agnes T.* 189 Wis. 2d 520, 525 N.W.2d 268 (1995).

An emergency protective placement under sub. (11) must be based on personal observation by one of the individuals listed in sub. (11) (a). Costs could not be assessed against the subject of an emergency placement proceeding that was outside the statutory guidelines. *Ethelyn I.C. v. Waukesha County*, 221 Wis. 2d 109, 584 N.W.2d 211 (Ct. App. 1998).

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence, or raise evidentiary objections. A court could consider such participation helpful and, in its discretion, could allow an interested person to participate to the extent it considers appropriate. *Coston v. Joseph P.* 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. App. 1998).

Sub. (17) requires the closing of all records filed with respect to ch. 55 proceedings, including the index, docket, and files maintained by the register in probate. 67 Atty. Gen. 130.

Under sub. (1) (c), the duty of the corporation counsel is to assist the court and not to act as counsel for petitioning private parties. Under sub. (9) (a), the court should order protective placement in an existing facility. 68 Atty. Gen. 97.

Protective placements are discussed. 72 Atty. Gen. 194.

"Residence" under s. 55.06 (3) (c) is defined in s. 49.01 (8g). 76 Atty. Gen. 103.

New legal protection for persons with mental handicaps. *Greenley and Zander*, WBB April, 1986.

Guardianships and Protective Placements. *Viney*. Wis. Law. Aug. 1991.

Guardianships and Protective Placements in Wisconsin After *Agnes T. Fennell*. Wis. Law. May 1995.

**55.07 Patients' rights. (1)** The rights and limitations upon rights, procedures for enforcement of rights and penalties prescribed in s. 51.61 apply to persons who receive services under this chapter, whether on a voluntary or involuntary basis.

**(2)** A parent who has been denied periods of physical placement under s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with respect to access to a child's records under this chapter.

**History:** 1977 c. 428; 1987 a. 355.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5–99.